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### Report of the Special Rapporteur on the situation of human rights in Cambodia: comments by the State\*

#### Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the comments by the Royal Government of Cambodia on the Report of the Special Rapporteur on the situation of human rights in Cambodia.


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## **Report of the Special Rapporteur on the situation of human rights in Cambodia: comments by the State**

### **Comments on the Report of the Special Rapporteur on the situation of human rights in Cambodia**

This document is the comments of the Royal Government of Cambodia (RGC) on the Report of the Special Rapporteur on the situation of human rights in Cambodia dated 19 June 2018 (hereinafter “the Report”) and Addendum dated 20 August 2018 (hereinafter the “Addendum”).

The RGC commends on the approach taken by the Special Rapporteur using the lens of SDGs in evaluating the overall development and promotion and protection of human rights in Cambodia in the Report. Technical assistance in improvement of judicial system should be recognized.

The reflection on discrimination against Vietnamese and campaign on ethnic hatred by some opposition politicians in Para 9 of the Addendum is considered as a positive move by the Special Rapporteur.

However, the RGC is not in agreement and is disturbed by the countless accusations without any specific evidence made by the Special Rapporteur.

Most of her previous requests for comments did not provide adequate time for the RGC to cross-check information regarding the accuracy and credibility of the various allegations made against the government. The time factor is an essential part for the RGC to provide proper point by point responses based to her report. We believe that this factor alone is totally in contradiction to her “duty to seek cooperation with and provide assistance to the RGC”.

According to the Report and the Addendum, every accusation made by those against the RGC are considered by the Special Rapporteur as a ‘fait accompli’ without her questioning the accuracy of the facts and the background that transpired, the political motivation, to name just a few. Quite on the contrary, all the RGC’s responses to safeguard its rightful legitimacy, sovereignty, independence and public order are categorically treated as “oppression.”

With regards to the Addendum, the RGC is seriously doubting the motive of the Special Rapporteur in publishing information going back from the elections from 1993 until the present. The RGC is not clear as to her intended messages: Does she want to portray that all the previous elections were fraudulent including that of the 2018? Or does she intent to rewrite a totally different narrative about Cambodia’s elections to put into the official record?

Despite her long report, she failed to reflect what are the reforms that have been achieved by the National Election Committee. For instance, in terms of electoral system, in previous elections, there were always allegations on vote irregularities such as voters’ list, registration and management, etc. Now that the voter registration being digitalized, any allegation on voters’ list has been neutralized and the new list was well accepted by all political groups. Such significant achievement was overlooked by the Special Rapporteur.

In her coverage of the 2013 election, the Special Rapporteur only provided a one-sided narrative version of the opposition groups. Although the Addendum gave every little details of actions from the opposition groups, it failed to reflect properly the explanations made by the RGC concerning the violence-provoking conducts, the disruption of public order and the destruction of public properties made by these groups.

In two other instances regarding the actions of COMFREL, the Special Rapporteur did neither mention the credibility of the organization when it made false claim on the indelible ink nor did she mention that, as electoral watchdog, COMFREL failed to condemn violent activities of the opposition group protesting at the polling station.

With the firm respect of the impartiality of the institution that the Special Rapporteur represents, the RGC wishes to provide additional comments to the previous responses in the Report in July 2018 and to the Addendum.

## **Cambodia's Election 2018**

Cambodia adheres to a multi-party democratic system as clearly demonstrated by the sheer number of political parties involved over the last five general elections: 20 for the 1993 general election; 39 for the 1998 election; 23 for the 2003 election; 11 for 2008 election; and 8 for 2013 election. There are 20 officially registered political parties for the election in 2018.

The outcomes of the 29th July election reflected a prevailing “stable functioning democratic process” in Cambodia.

The most noteworthy observation is the peaceful and upbeat atmosphere in which the electoral campaign and the Election Day took place. For 21 days, 20 political parties had the opportunity to conduct their electoral campaign, unimpeded in their activities, and free to promote their policy platforms and express their views, some of which were very harsh criticism against the Government. On the last day of the campaign, we have witnessed long procession of cars and motorcycles, wielding flags and banners from different political parties, crisscrossing peacefully throughout the capital without any incident. On the election day, long queues of voters can be observed, even before the opening of the polling stations. International observers were surprised by the ordinary and orderly behaviors of voters. They recognize that the process of vote counting was conducted carefully with professional polling service officials.

Out of 8,380,217 registered voters, 6,956,900 went in their polling station, representing 83.02 % of the voters. That represents an excellent rate of participation if we compare with the rates of the previous ballots and with those current in quite a lot of western countries. The votes divide up into 6,362,241 valid votes and 594,659 invalid votes. The CPP obtained 4,889,113 votes, the 19 other parties divide up 1,473,128 other valid votes, the bulk of which went to FUNCINPEC with 374,510 votes, the LDP with 309,364 votes and the KWP with 212,869 votes. As such nearly 1.5 million people voted in favour of another party than the CPPC. These votes are thus representative of the votes for the opposition. We can draw the following observations from these results:

- 1) No one can dispute the will of the overwhelming majority of registered voters who went to the ballot to freely express their choice. This choice calls the respect for all, including for foreigners.
- 2) The CPP maintains its status as the ruling party since 1998 (just like the PAP of Singapore or the CDU-CSU of Germany, for example), which reflected the wide popular support.
- 3) If we consider the exceptionally high number of invalid votes this time as compared with the previous elections, we can deduce that it was a rejection or a dissatisfaction with the current political proposition of the CPP. In other words, we can consider that more than two million voters (out of some 7 million) expressed a preference different from that of the CPP.

From various published statements of national and international observers, the National Election Committee (NEC) is to be given credit for its remarkable professional works, which has enabled the smooth conduct of a democratic, free and fair election.

By generally accepted standards, the first criterion for the legitimacy of an election is the participation rate of registered voters. For this election, the turnout of 83.02% has exceeded those of the elections in 2013 (69.61%) and in 2008 (75.21%). This exceptional high turnout rate is truly a reflection of a strong confidence of the citizens in the electoral process and in the NEC, the institution that manages it. This is important to point out that the voter participation rate exceeds, sometimes by far, those in several Western democracies, including some of which that are strongly critical of the Cambodian election

now. From the perspectives of some political analysts, this participation rate is a complete repudiation of the call for a boycott by some opposition politicians.

The second criterion for legitimacy is the pluralism of political offer or to put it differently, does the voting citizenry have a choice between different, and even opposing, options? Observers on the ground can attest to that effect, i.e. concrete and genuine rejection by some political party leaders to the policies of the ruling party. Public political debates between opposing candidates have taken place and are well covered by news media and in numerous television channels. Unlike in the past, these debates were civilized exchanges and not tainted by hate speech, incitement to racism, populism and ultra-nationalistic rhetoric. For the first time, the Cambodian citizenry was exposed to true democratic and sensible debates about the economic development, political, institutional and social issues that affect their lives, a far cry from the past hysterical speeches about Vietnam and the Vietnamese.

Nearly 7 million Cambodians voters have made their choice and this choice must be respected by all, be they Cambodians or foreigners, ordinary people, journalists, activists or diplomats. The choice of the Khmer nation, a sovereign nation, must be respected.

It is worth noting that there were 539 international observers from more than 50 countries, some of which came from respected international institutions, among others, the International Conference of Asian Political Parties, the Asian Parliamentary Assembly, the ASEAN Inter-Parliament Assembly, the European Council on International Relations, to witness this historical moment of Cambodia's peaceful democracy, not to mention the nearly 80,000 political party agents and about 80,000 others from national associations and organizations.

Cambodia regrets the politically motivated assessments of some foreign governments who refused to send observers and instead declared from the beginning until the end that the election was not free and fair. Disingenuously ignoring the technical quality of the electoral process is tantamount to displaying the utmost contempt for the will of the Cambodian people expressed through the 6,956,900 ballots. Such manner undermined the spirit of friendship and cooperation that have been enhanced thus far and casted doubt on the genuine sincerity to witness Cambodia further progressing in its irreversible democratization while enjoying the "longest peace in modern history" and consistent sustainable development.

### **Newly-created political parties in 2018 elections**

The RGC noted with deep regret once again the bias and the prejudice of the Special Rapporteur in her comments on the newly-established political parties in the 2018 elections.

Such a reference implies the discrimination of the political and civil rights of the Cambodian people to participate in political life, including the creation of a political party, which are well guaranteed in the Constitution. In the 2018 elections, 19 political parties did oppose the ruling party, Cambodian People's Party (CPP). It is as democratic a true political contest can be with real contenders to the present ruling party. Some parties, which are long-standing opponents to the CPP, did not have much success in the past because they refuse to resort to the CNRP's ultra-nationalistic and racist populism rhetoric promoting social hatred and division.

### **Call for electoral boycott**

Unlike some countries, Cambodia does not have any law punishing the people who do not cast their vote. However, a call for electoral boycott is considered as violation against both Article 34 of the Constitution and Article 142 of the Law on the Election of Members of the National Assembly. Article 34 guarantees the right to vote and Article 142 stipulates that it is illegal to "deter" citizens from registering to vote, or to cause "confusion resulting in the loss of confidence in the election".

## Release of convicts

Cambodian politicians, analysts, land activists, and journalists were consecutively amnestied by His Majesty The King as proposed by Samdech Techo Prime Minister Hun Sen. As of 31 August 2018, 23 convicts were released:

- Kim Sok was released on 17 August 2018. He was sentenced to 18 months in prison on 10 August 2017 on charges of incitement and defamation for insinuating that the ruling party was behind the killing of analyst Kem Ley.
- Tep Vanny and 3 other activists were released on 20 August 2018. On Feb. 23, 2017, the Phnom Penh Municipal Court convicted Tep Vanny of assaulting two security officers during the 2013 protest at Hun Sen's home, and sentenced her to 30 months in prison.
- Two former Radio Free Asia reporters Oun Chhin and Yeang Sothearin were released on bail on 21 August 2018;
- Sourn Serey Ratha, President of the Khmer Power Party, was released on 23 August 2018. On 13 August 2017, Mr. Sourn Serey Ratha was arrested and charged with inciting soldiers to disobey orders after he criticised the deployment of troops to the Lao border. He posted on his Facebook that conflict with Laos would only harm soldiers, while the generals enjoyed their "money" and "girls" in the comfort of air-conditioned rooms. He was charged under Articles 471, 472, 494 and 495 of the Criminal Code for "*inciting military personnel to disobedience*", "*demoralisation of the army*" and "*incitement to commit a felony*".
- Um Sam An, an American and Cambodian citizen and a former CNRP lawmaker, was released on 25 August 2018. On 10 October 2016, he was sentenced to two years and six months in prison for his Facebook posting in which he accused the government of ceding territory to Vietnam by using improperly demarcated maps at a time of heightened political sensitivity surrounding border issues.
- Meach Sovannara, former head of the CNRP's information department, and other 13 ex-CNRP officials were released on 27 August 2018. The 14 were found guilty of leading and participating in an insurrection after a violent clash between party supporters and Daun Penh district security guards at the Freedom Park on 15 July 2014.

According to Cambodian law, the Prime Minister has the rights to propose for amnesty to His Majesty The King and that the King will make the final decision whether to grant the pardon. Amnesty is normally practiced during three major festivals in Cambodia: Khmer New Year, Water Festival and Buddha Day – Visakha Bochea.

According to Cambodian laws, the recent release of the 23 convicts was categorized in 3 groups:

*First*, release by the King's amnesty pursuant to the Prime Minister's proposal. This category applies for convicts having served two-third of imprisonment term and other special circumstances. Tep Vanny, Um Sam An, Meach Sovanara, Sourn Serey Ratha, and several others were released after they wrote to the Prime Minister, recognizing the court's judgments and seeking him to make a proposal to the King to grant their amnesty.

*Second*, release pursuant to the court procedures. Kim Sok was released because he had completely served his imprisonment term.

*Third*, release pursuant to the court's discretion. The two former RFA staff, Oun Chhin and Yeang Sothearin were released on bail and awaiting court hearing in the future.

## Dissolution of CNRP

Based on *Kem Sokha's* video footage in which he confessed to the conspiracy to overthrow the government through a "*Colour Revolution*" modelled after those carried out in Yugoslavia and Serbia, the *FUNCINPEC Party* and the *Cambodian Youth Party* filed

separate complaint to the Ministry of Interior (MoIn) requesting the dissolution of the CNRP. Based on these complaints, and as provided for by the Law on Political Party, the MoIn proceeded to submit the case to the Supreme Court for adjudication. In addition to *Kem Sokha's* video footages, there are ample evidences as confirmed by *Kem Sokha* that criminally implicate him and other senior officials of the CNRP.

The act of treason of *Kem Sokha*, as the top official of the CNRP, partially implicate the CNRP. As a matter of fact, the daughter of *Kem Sokha*, Ms. *Kem Monovithya*, pointed out in her capacity as a member of CNRP's Standing Committee and Deputy Director-General of Public Affairs, that this plan was not committed by *Kem Sokha* alone. It was done in a systematic manner by the whole CNRP as an organization. Furthermore, Mr. *Eng Chhai Eang's* affirmation of cooperation outside the country with the convict *Sam Rainsy* and the latter's gathering with CNRP parliamentarians are proof to the systematic act of treason linked to CNRP, which is a flagrant violation of point 6 and point 7 of Article 6 new (2) and Article 7 of the Law on Political Parties (from here onward LPP). An interview with *Radio Free Asia (RFA)* on October 27, 2017 confirmed openly the illegal interactions between CNRP parliamentarians and convict *Sam Rainsy*. Based on an overwhelming evidence, including those cited above, the Supreme Court came to the conclusion that the CNRP as an organization conspired with a foreign power to overthrow the legitimate government in Cambodia by way of a "Colour Revolution", such an act is an illegal act against the Kingdom of Cambodia, harming the national security and a threat to the peace of the country, and in clear violation of Points 2, 3, 5, 6, 7 and 8 of Article 6 new (2) and Article 7 of the LPP.

Article 6 new (2) of the LPP stipulates that:

*"All political parties shall not undertake any of the following activities:*

....

*2. Undertake sabotage against liberal multi-party democracy and constitutional monarchy;*

*3. Violate security of the state;*

....

*5. Incite to cause the break-up of the nation;*

*6. Use voice messages, images, documents, or acts of convicted felons for the political benefit of their political parties;*

*7. Agree openly or tacitly or conspire with convicted felons for the political benefit of their political parties;*

*8. Support or plan or conspire with others to oppose the interest of the Kingdom of Cambodia as stipulated in point 1 to point 5 above."*

Article 7 of the LPP states that:

*"All political parties must not be under the subordination or order of foreign political parties or government".*

The Supreme Court issued its final judgment on November 16, 2017 to dissolve the CNRP and ban political activities of the 118 CNRP leaders for a five-year term in accordance with Article 44 new (2) which states that "... a political party that violates Article 6 new (2) and Article 7 of this Law, the court may decide to either

- *suspend the activities of the political party for a period of no longer than five years; or*
- *dissolve the political party."*

The decision of the Supreme Court was made by a panel of nine judges at a public hearing held in accordance with the court procedures of the Kingdom of Cambodia whereby all the relevant parties were afforded the opportunity to present their defense by appointing their own representatives or legal defense team. Following the Supreme Court's summon, the CNRP have chosen not to file a defense petition nor have they appointed representatives or lawyers to attend the court proceedings, which is tantamount to an abandonment of their

legal rights to defend themselves before the court. We wish to highlight that such court practices do not differ from those of other countries, whether they belong to the Common Law or Civil Law system. By refusing to participate in the court proceeding, the CNRP not only abandoned its rights to legal defense but also acquiesced to a guilty plea in absentia for its violations of the various provisions of the LPP.

According to Article 128 new and Article 130 (new) of the Constitution, the judicial power is an independent power entrusted to the Supreme Court and the courts at all levels, and no organ of the legislature or executive power can interfere in the affairs and decisions of the court.

The Supreme Court's decision is the decision of a sovereign state. The enforcement of judicial decisions in a country is the internal affairs of a sovereign state, such principles are enshrined in Articles 2.1, 2.4 and 2.7 of the Charter of the United Nations. Non-enforcement of laws will jeopardize the country's national security and peace. As a state upholding the rule of law, Cambodia cannot take lightly the threat to the peace and stability of the nation nor can it allow the CNRP to escape its legal consequences of its illegal actions.

On 8 December 2017, the dissolved CNRP filed an appeal to reverse a ruling by the nation's highest court to dissolve it. The Supreme Court rejected the appeal according to the legislation.

On 21 August 2018, the Supreme Court denied bail to former CNRP leader Kem Sokha for the second time. His pre-trial detention had last been extended by six months in March 2018.

### **Prohibition of political activities of 118 CNRP leaders for a five-year term**

The prohibition of the political activities of 118 CNRP leaders for a five-year term is the direct consequence of the Supreme Court's decision after the dissolution of the CNRP. Such prohibition is not a permanent deprivation of political rights. The Constitution and the laws of the Kingdom of Cambodia provide for this kind of prohibition of the right to vote, for example, for incarcerated criminals. The Law on the Election of the National Assembly also prohibits members of the National Election Committee (NEC) to vote during their mandate. The deprivation of some political rights for individuals pursuant to national laws is not a novelty for Cambodia but it is in fact a common practice for most countries around the world, for example U.S. laws prohibit American citizens not born in the United States to run for President. After nearly three decades of war which ended only in 1998, political rights and human rights in Cambodia have been widely recognized, protected and continuously promoted, perhaps now far better than most of the countries in the region. Many political parties are conducting their activities under the Constitution and in accordance with the principles of liberal democracy. There were 20 political parties registered and recognized by the NEC to participate in the 6th general elections which took place on July 29, 2018.

### **The reallocation of party's seats**

According to Article 150 (new) (2) of the Constitution, the NEC is an institution mandated to organize, manage and administer the Election of Senate and the Election of Members of the National Assembly and other elections. The NEC shall exercise its mandate in an independent and neutral manner so as to ensure that the election is conducted in a free and fair manner pursuant to the principle of multi-party liberal democracy.

Article 76 (new) of the Constitution stipulates that members of the National Assembly shall be elected by free, equal, direct election and secret ballot. Moreover, Article 27 of the Law on the Election of Members of the National Assembly (from here onward LEMNA) further stipulates that the political party that has been registered in accordance with the LPP shall have the right to register its political party and the list of candidates running for the election

to be members of the National Assembly. Re-allocation of seats of dissolved party shall be undertaken pursuant to the LPP in the legislature of the National Assembly. The NEC shall comply with the provisions stipulated in Article 138 (bis) of the LEMNA, which stipulates that, in the mandate of the National Assembly, if any political party declares to give up on their seats or has been dismissed from political party registration or has been dissolved according to the LPP, the list of its candidates and representatives will become invalid and disqualified. In that event, the NEC will distribute those vacant seats within at most 7 days to other political parties who participated in the national election.

## **Organisation of Previous Elections**

Excluding the election organised by UNTAC in 1993, the National Election Committee (NEC) has successfully organised the following elections: 1) five elections of Members of the National Assembly, including the July 2018 election; 2) four elections of Senators; 3) two elections of Municipal/Province/City/District/*Khan* Councils; and 4) four elections of Commune/*Sangkat* Councils.

In the 2013 election, a total of 6,735,244 voters representing 69.61% of registered voters casted their votes. The total registered voters in 2013 were 9,675,453. In the 2017 commune/*sangkat* elections, 7,107,395 out of 7,865,033 registered voters turned out, accounting for 90.37%. This was a higher turnout than in many other countries. The election went smoothly and peacefully. The successful organisation of these elections is a reflection of the positive development of liberal democracy in Cambodia. People could fully exercise their rights and express themselves throughout the election processes. People participated in campaigns to support their favorite parties without any intimidation. Each member of a political party could freely carry out its respective campaign activities without any threat or intimidation from any institution or political party. During the election process, there wasn't any major violence affecting the election. Also, there was no report of political assassination of any member of a political party.

The 2013 election was monitored by 292 international observers and 40,142 national observers who announced that the election was conducted in a free, accurate and fair manner. National and international observers appraised that for each past election in Cambodia there was a continuous improvement, in particular the commune/*sangkat* election in June 2017. The voter registration system has been modernised, which made it impossible for any political parties to criticise it or use it as an excuse to reject the election results.

## **Plots toward the Rejection of Election Results in 2013**

Although the 2012 commune/*sangkat* election result was accepted by all political parties, the CNRP planned to create excuses in order to reject the results of the 2013 election of members of the National Assembly as follows:

- After the 2012 commune/*sangkat* election, the Sam Rainsy Party (SRP), currently known as "Candlelight Party", and Human Rights Party (HRP) were well aware that they could not win in the 2013 election against the CPP. The leaders were therefore forced to merge the two parties into one party; that is, the Cambodian National Rescue Party (CNRP), with assistance from non-government organisations supported by foreign countries. In the 2012 commune/*sangkat* election, the CPP received 3,631,082 votes, the SRP received 1,224,460 votes and the HRP received 580,483 votes. In total, these two parties received 1,804,943 votes. Although the two parties received fewer votes than the CPP, there was no notable protest against the election results, and all parties accepted the results.

- The SRP and HRP boycotted the updating of the 2013 voter list, which was based on the 2012 voter list. Some stakeholders of the election process evaluated that the 2012 voter list as better than the 2008 voter list. The NEC provided four months to all political parties, including the two parties, to file any complaint in relation to the voter list. This boycott was their premeditated plan to create an excuse to accuse the NEC that the voter list was fraudulent, even though they did participate in the election process.



- After the announcement of the official voter list for the 2013 election, the National Democratic Institute (NDI) fabricated a lie that the NEC had deleted the names of some 1.04 million voters supporting the CNRP. Likewise, COMFREL made up a somewhat similar figure: 1.25 million names. This demonstrated a coordinated plot between the CNRP, NDI and COMFREL to allege that the NEC deleted the names of their supporters from the list. Such pre-emptive move was aimed at rejecting the election result should they ultimately lose in the elections. In the 2008 election, the NDI alleged that 88 people could not find their names on the voter list. However, the NEC found that among the 88 people, 15 had their names on the voter list, 19 had 2 names in one polling station, 7 had registered twice, 3 had lost their right to vote, 2 had died, 2 were not residents in that commune and 1 had not registered. These specific and accurate figures illustrated that the allegation made by the NDI regarding the missing of the 88 names was a fabrication and manipulation. In 2013, under the pretext of confidentiality, the NDI refused to cooperate with the NEC in providing the 1.04 million names whom they alleged were missing from the voter list, and COMFREL also refused to provide its 1.25 million names. These acts highlighted the premeditated collusions by the two organisations and the CNRP.

- On 23 July 2011, in a meeting through a video conference from Tunisia, Sam Rainsy spoke to his supporters about the intention to overthrow the legitimate authorities by using the model of change applied in Tunisia. Sam Rainsy boasted of his hope that “*Cambodia will see the change seen in Tunisia because such a movement is currently happening in Libya, Yemen and Syria, and sooner or later, it will happen in Cambodia*”. Sam Rainsy wanted Cambodia to have the same changes seen in those countries; currently, Tunisia and Egypt are suffering from turmoil, insecurity and political instability while Libya, Yemen and Syria are suffering from bloody wars.

- Ahead of the elections, the leaders of the CNRP implemented their plans to mobilize the public by inciting them to protest on various issues such as land, human rights, environment and natural resources while the RGC had been working to resolve them. This party invented false information and made baseless allegations against the leaders of the RGC on such diverse issues in order to mislead the general public, nationally and internationally, into believing that the RGC is incapable of leading the country.

- Local and foreign media, such as Voice of America, Radio Free Asia, Voice of Democracy and Beehive Radio, are totally biased in favor of the opposition party, which used social media including Facebook, YouTube and Twitter, to freely disseminated false information relating to political and social issues. They echoed the fabrication, manipulation and incitement by the CNRP and its supporters for the purpose of polluting the social atmosphere, gaining political benefits and destabilizing the CPP. The pro-opposition media formed a network and acted in sync, both before and after the election, supporting the opposition party to win the election or to overthrow the legitimate authorities, by grossly ignoring the professional integrity and code of ethics of the press.

- Two weeks before polling day, the CNRP released a false document using the name of the International Republican Institute (IRI) as the institution conducting a survey showing that the party would receive votes accounting for 64 seats. The dissemination of such a false document was to attract sympathy from the general public to win the election or to prepare an excuse for a rejection of the election results by using this figure as a basis for claiming that there were election frauds when the party lost. Later on, the IRI denied that it had not issued such document.

- On 19 July 2013, Sam Rainsy and Kem Sokha said, during their rally at the Democracy Park and during an interview by RFA, that it was the NEC stealing votes and proclaimed in advance that the CNRP would win the election, and if they lost, they would not accept the election results and would call for mass demonstrations.

- On 20 July 2013, Sam Rainsy stated in Kampong Speu province, “*All compatriots, this is the last opportunity; if we don’t rescue our nation now, it will be too late in four or five years as the Vietnamese will come and settle everywhere in Cambodia and we will become slaves of Vietnam ...*”

- One day before polling day, which was supposed to be a cooling day, COMFREL released an exaggerated statement that the indelible ink to be used for marking those already voting

could be easily washed off after just a few minutes. It was the first time that such an issue related to the indelible ink was brought about before the 2013 election. The claim was widely spread to mislead the public into believing that voters could vote more than once. This was a psychological attack that could influence the decision of the voters as they could become sympathetic to the CNRP and vote for the party. It also could make the public suspicious of the election process and results because they might believe that the CPP committed electoral frauds. This was a premeditated plan to be implemented merely one day before the election in order to help the opposition party to win the election or to be used as an excuse to protest against the election results should it lose. In fact, this ink is of high quality and has been used in elections in other countries such as India, Afghanistan, Singapore, Thailand, Malaysia, South Africa and Nigeria.

- Ahead of the elections, the opposition leaders always use ploys, claiming time and time again that the election would not be free, accurate and fair. They would not participate in the election and would reject the results, but finally they participated in the election. During a meeting with international election observers, Sam Rainsy and Kem Sokha proclaimed that they did not recognise the NEC and would not accept the election results, but stated that they might win the election. An international observer, who is a senior politician from the International Conference of Asian Political Parties (ICAPP), asked Sam Rainsy, *“If the CNRP does not accept the NEC and the election results, why would your party participate in the election?”* *“And if your party wins, would you still reject the election results?”* Sam Rainsy and Kem Sokha did not answer these questions, and diverted the discussion to other topics. Such behaviour implies that the CNRP would have accepted the results only if it had won the election, and rejected the results if it had lost.

There were many other activities that the opposition party carried out in various forms to make the public lose trust in the RGC in an attempt to win the election. The CNRP had also used various accusations against the NEC and the CPP before the election to create an excuse for rejecting the election results.

### **2013 Election Process at Polling Stations**

With many years of experience, the NEC conducted the election at polling stations in a smooth and professional manner regardless of the disturbances caused by activists of the opposition party outside some of the polling stations. The CNRP used every possible tactics to have their activists and supporters lose trust in the NEC and try to mislead them into believing that the CNRP lost because the NEC committed election frauds.

In accordance with the procedures, on 28 July 2013, by 7:00 am, the 6 election officers including the chief of the polling station, two agents of the CPP, two agents of the CNRP and the agents of FUNCINPEC, Sam Rainsy Party, Human Rights Party and Norodom Ranariddh Party as well as observers from COMFREL had gathered at polling stations. Therefore, in one polling station, there were 2 agents from the CPP compared to 5-6 agents from the other parties, including 2 from the CNRP and several others from the other parties as well as observers from COMFREL.

Agents from political parties and observers from NGOs witnessed all steps in the election process, from the checking of ballot boxes, casting of ballots, opening and closing of ballot boxes, vote counting and transporting the ballot boxes to the Commune/*Sangkat* Election Commissions (CEC), the Capital/Provincial Election Commissions (PEC) and the NEC. The agents of all political parties present signed all forms relating to the election process at each polling station during the handing over of reports at commune/*sangkat*, capital/province, and NEC levels. The agents and observers recorded the election results based on Form 1104, which was provided at all the 19,009 polling stations. Despite the presence of those observers and their agents who signed all relevant forms at all the levels (CEC, PEC and NEC), the CNRP still rejected the election results, offensively alleging that the election was full of irregularities. If what was being alleged had been true, it would have meant that the agents of the CNRP, agents of other parties and observers were also taking part in the election frauds.

Had there been any irregularities, the agents of political parties could have orally complained directly to the polling station chief. If not satisfied with the resolution provided

by the chief, the agent could have filed a complaint using Form 1202 with CEC before 11:30 am of the following day. As a matter of fact, there were no complaints causing any agent of the CNRP to refuse to sign any form required by the NEC at any polling station.

The rejection of the results was nothing new, as at every election, the party led by Sam Rainsy has always rejected the election results. While COMFREL claims itself to be an independent mechanism for election observation to ensure a free and fair election, why did it take a stance biased towards the opposition party, claiming that there were irregularities in the election while its own representatives took part in every process on the polling and vote counting day and witnessed the calculation of results?

With their agents and observers present, the political parties and NGOs were able to calculate the election results by themselves based on Form 1102 posted up at the polling station or Form 1104 provided to the agents and observers at the polling station. Form 1104 provides information on preliminary results to political parties. Based on Forms 1104 from each polling station sent by CEP and PEC, the NEC announced the preliminary results of the election in the evening of 28 July 2013.

### **Situations outside Polling Stations**

The CNRP organised many youth groups to create disturbances and chaos at the polling stations in order to fabricate false stories and provoke various issues as a psychological tactic to gain sympathy from the voters, although it was a violation of the law.

- At one polling station in *Boeung Tumpun* commune (Phnom Penh), a well-arranged group of about 100 opposition activists, among which only 4 or 5 people were residents of this commune, showed up from 7am to 6pm to raucously shout and provoke chaos so as to disturb the voters at the polling station by using slogans such as: “*missing names, no names, washable indelible ink and “Number 7, Number 7! [the number on the ballot for the CNRP]”*. The group also threatened the officials at the polling station by shouting “*after leaving the polling station, you will be killed*”, etc. People in this group used smart phones which allowed them to take photos and videos at the polling station. These activities were strictly prohibited at all polling stations under the Law on Elections of Members of the National Assembly (LEMNA). At 10 am, Sam Rainsy went to visit the polling station, but was not allowed to enter.

- At another polling station in this commune, a mob accused the polling station’s Deputy Chief of election fraud, as he put four null ballots in a drawer and then added another three ballots in the presence of election officers, agents of the political parties and observers. As a matter of fact, he put null ballots onto the drawer so that they were not mistakenly mixed up with the valid ballots. This act did not violate the electoral regulations and procedures. Moreover, the CNRP’s agents also acknowledged that they were aware of the placement of those null ballots and confirmed that it did not constitute fraud. However, these gangs still threatened the Deputy Chief saying that “*if he did not kneel down and apologise, they would kill him when he left the polling station*”. Finally, fearful of his safety, the Deputy Chief knelt down to apologise, and the gangs took photos and uploaded them on Facebook with the caption: “*a thief is caught, and now he begs for forgiveness*”.

- At one polling station in *Kandal* province, a mob of CNRPs activists provoked disturbances and chaos, preventing voters from voting by alleging that they were “*Yuon*” [a derogatory term for Vietnamese]. In fact, those people were villagers in the neighbourhood with proper names on the voter list at that polling station and valid residence and identity cards. Such acts by the opposition activists were completely illegal, constituting a criminal offence.

- At many polling stations across the country such as *Kandal, Prey Veng, Takeo, Kompong Thom* provinces and *Phnom Penh Capital*, the opposition party’s activists engaged in various improper acts, such as raucously shouting to cause disturbance, using psychological war to make voters believe that the CNRP would win the election, alleging that “*Yuon*” were allowed to vote and election officials committed election frauds. They instructed the people to vote for “*Number 7*”, and shouted “*Yuon*” when seeing any fair-complexioned voters standing in the queue.

- During ballot counting, CNRP activists, who were watching the ballot counting in front of the polling station, caused anarchy, including roaring with excitement when hearing the election officials read the ballots for Number 7, and insulting and throwing bottles of water when hearing the ballots for Number 4 [the number on the ballot of the CPP].
- Violence broke out at one of the polling stations in *Steung Meanchey*, caused by the opposition party activists as they provoked disturbances and chaos and incited their party's supporters to stand up against the competent authorities, using a protest against irregularities at the polling stations as a pretext. This violent act resulted in a clash with the authorities and the burning of two military police cars. Such an act was a starting point of a premeditated plan to create an excuse, so that they could allege the election process was full of irregularities and therefore reject the election results.
- On the evening of the polling day, before the results were final, Sam Rainsy announced that the CNRP had won the election, but he soon withdrew this claim.
- The CNRP used various stratagems to cause chaos and create political instability through false stories by releasing their activists' audio record alleging that Samdech Techo Prime Minister Hun Sen and Samdech Kittipritthbindit [Bun Rany, the wife of Samdech Techo Hun Sen] had fled the country. The lie about the absence of Samdech Techo made the people so fearful that they rushed to fuel cars, buy food supplies, and think of various scenarios to be prepared in case the country fell into a civil war again, as some had experienced decades of war in Cambodia.
- The CPP, as the ruling party, strictly forbade the authorities to take any countermeasures in order to avoid any clash on the polling day. Clashes could escalate into violence, thereby providing the opportunity to the opposition to have an excuse for accusing the RGC.

#### **The Post- 2013 Election Situation**

- On the day after the election, the CNRP exaggerated the alleged irregularities of the election process and demanded that a new mechanism, called a "*Joint Committee*" or "*Special Committee*", be established under the leadership of the United Nations or an NGO to investigate the so-called election irregularities, with the NEC playing only the role of facilitator. This proposal indeed contradicted the LEMNA and the Constitution, which stipulate the duties and obligations of the NEC and the Constitutional Council.
- COMFREL on that same day announced that its own calculations of the election results showed that the CPP had won 49.49% of the total votes and the CNRP had won 43.05%, making the CPP and the CNRP secure 67 seats and 56 seats, respectively. The 1-seat difference between the final official results and this calculation of COMFREL resulted from a miscalculation of election results in *Kratie* province. COMFREL could have calculated the total seats won by each political party through Forms 1104 which COMFREL's representatives had received from the polling stations or through Forms 1102 posted up at polling stations. Due to a series of coordinated conspiracies and the fact that COMFREL announced the election results which contradicted the exaggerated results claimed by the CNRP, COMFREL subsequently removed the announced figures from its website in order to defend the reliability of the CNRP's fabricated results. Nevertheless, COMFREL's version of the election results had been widely circulated to various media outlets' websites, and the news had already been published in *The Cambodia Daily*.
- On 4 August, Kem Sokha declared: "*At 5:00 PM, the ballot counting showed that the CNRP won 76 seats. Someone (unknown) reported to the diplomatic missions that we won; then the ballot counting was suddenly stopped. They (CPP) announced that the CPP won; so, they had trick to cheat us. [...] International Organizations, diplomats from the democratic countries and all NGOs knew clearly that the CNRP won the election.*"
- Furthermore, on that same day, 4 August, Sam Rainsy said: "*The CPP claimed that it has from 6 to 7 million members, but it received only around 3 million votes, so where are the rest? Those 3 million votes for the CPP were said to come mostly from threatening, stealing, cheating, buying, ghost ballots, Yuon and empty ballots*". If such a statement were true, it meant that there would not be any supporters for the CPP.

- On 6 August, Kem Sokha told the CNRP's activists and demonstrators: *"I can't mention the source, but it was from a foreigner, H.E. Sam Rainsy and I – on the polling day at 5-6pm – were very well informed that we got 76 seats, yet an hour later the results were upside down."*

- Sam Rainsy's Facebook page on 8 August posted: *"I know that security force movements are happening under the order of a ruler, and I also know that you – my fellow compatriots, soldiers, policemen and all members of the armed forces – are looking forward to a new government which will provide you with a salary of at least 1 million Riels per month. Therefore, now is the golden opportunity for all of you to unite and stand up with our citizens and fellow CNRP youths to demand for change toward the formation of a new government (led by the CNRP) in 2013 at all cost."*

- On 12 August, Kem Sokha announced that the CNRP had won at least 63 seats, which contradicted his previous proclamation dated 4 and 6 August that the CNRP had won 76 seats. This announcement was just a trick and a tactic to lie to the citizens and international public.

- Sam Rainsy also incited people in provinces near Phnom Penh to *"participate in a historic mass demonstration... trembling the earth... to liberate our country... at any cost; if we let the dictators who are destroying our nation, who are notoriously corrupted and who used the Yuon to kill our own people, and if we allow them to continue for another four or five years, our nation will disappear; we, therefore, cannot let this happen and are prepared to rescue our nation at all cost."*

- In almost every public forum, the opposition party used fabricated data of COMFREL and NDI regarding the alleged missing names of 1.25 million voters and 1.04 million voters, respectively, as the excuse for the CNRP's loss. The CNRP's leaders manipulated the election results, claiming that the CPP won the election due to fraud, and they boasted that they were seeking justice for the voters. This party thus incited and mobilised people to join a demonstration called *"a mass demonstration at the will of voters"*.

- On 15 September 2013 at *Kbal Thnol* Bridge, the CNRP's leaders incited and mobilised people to use violence and cause insecurity in the neighborhood, and played dirty tricks on demonstrators to push them into clashes with police, resulting in injuries and deaths. The opposition party's leaders demanded that the deceased be paraded to the Democracy Park, where the demonstrators were mobilised and used it as the nerve centre of their campaigns. These acts were similar to what had happened in some countries where similar "colour revolutions" had taken place.

- A few days after the election, the opposition party began to mobilise their members and demonstrated once a week. It then turned into a daily demonstration. They declared to their supporters to keep demonstrating forever until the legitimate authorities were overthrown. They started from non-violent demonstrations and then pushed them into uprising, riots and violent protests joined by certain people, workers and youths, whom the opposition always claimed to represent the general will of the people. This was technically and financially supported by a number of foreign NGOs which claimed themselves to be the so-called Electoral Reform Alliance (ERA), in particular the NDI.

To realise their ambition, the CNRP used various tactics, insulting language and incitement without any responsibility in order to instil into their supporters' negative perceptions toward the CPP and leaders of the RGC. Such activities were carried out continuously before and after the election, during each rally and demonstration, such as:

The CNRP shouted insults at CPP members and leaders, calling them *"Yuon puppets"*, *"Yuon heads with Khmer bodies"*, *"traitors"*, etc.; The opposition party used nefarious methods to demand the Head of the Royal Government to step down, so that the election could be re-organised; for example, they shouted, *"Hun Sen! step down"*. The opposition party politically exploited the opinions of a small segment of the population as representing the will of the 15 million people. They also promised to increase the salary of teachers and civil servants to USD250 per month as a bait to lure them into the protests and to incite the hatred of class and racism for the sake of increasing the number of demonstrators.

In 2013, during each demonstration, the opposition party always exaggerated the number of demonstrators to 1 or 2 million; however, during the election campaign in 2017, Samdech Techo Hun Sen led the campaign which extended from *Chroy Changva* Bridge to Hun Sen Boulevard or to the 60m Boulevard (*Kbal Thnol*) and this gathering was only approximately 250,000 participants. This statistic clearly demonstrated that the opposition party did everything – including the exaggerated number of demonstrators – to fabricate the idea that one or two million demonstrators had expressed their will to overthrow the RGC.

In order to encourage and trigger demonstrations and strikes, on 23 December, Sam Rainsy and Kem Sokha told lies to the protesters that “*yesterday, I (Kem Sokha) learned from a source close to him (Samdech Techo Hun Sen) that, facing such a resistance, we could not stay. Yesterday, he (Samdech Techo Hun Sen) was about to step down, but now they (Vietnam) summoned him immediately... I fear that they (Vietnam) summoned him for an injection, and upon return, he refused to step down ...*” “*Yesterday, he was about to step down, and the forces were prepared to confess to the people ...*”

Sam Rainsy and Kem Sokha visited factories such as the *SL Garment Factory*, *Yakchin Garment Factory* and *Bavet Special Economic Zone* to incite workers to stop working, by promising to increase their wage to USD160 a month, while the party’s activists threatened and prevented the workers from getting to work and caused some damages to the properties. At the same time, Vorn Peou, the leader of the *Informal Economy Association*, which supports the opposition party, led workers to protest in front of the Ministry of Labor and Vocational Training and in front of the Office of the Council of Ministers. Demonstrators destroyed some public and private properties, such as at the *Lux Beauty Salon*, in front of the Phnom Penh city hall and at Freedom Park.

While Sam Rainsy and Kem Sokha announced their intention to negotiate with the CPP, they organised the transportation of stones, bombs made of gasoline bottles (*Molotov cocktails*), batons, slingshots firing steel balls, guns, swords and tyres to be stored at the demonstration sites in order to encourage the anarchists to commit violence and crime, to use firearms and swords against the authorities, to destroy the factories as well as public and private properties, and to cause serious chaos on *Veng Sreng Street* on 2 and 3 January 2014. Such activities showed that the two persons’ announcement of their intention to negotiate with the CPP was just to buy time and conceal their violent demonstration plots. The objective of the party’s leaders was to cause bloodshed and point a finger of blame at the RGC, and ultimately to achieve their final plan of grabbing power, and thus, as Kem Sokha stated, they were following the Yugoslavian model.

The violent demonstrations and bloodshed did eventually take place on *Veng Sreng Street* as indicated by the advance intelligence of the three embassies provided to the RGC. The opposition party benefited from the violent demonstrations; some countries may have known or have not known about the well-thought-out plot, especially those that helped organise it, but rather they supported the illegal acts of the CNRP and alleged that the RGC used force to crack down on non-violent demonstrations, restrict the freedom of the people and violate human rights.

On 25 December 2013, Sam Rainsy said, “*this is the determination of the CNRP with Sam Rainsy and Kem Sokha speaking before workers, reiterating that the CNRP will form a new government, re-build the country, and 29th of December will be the finale.*” Such appeals clearly demonstrated that it was a “colour revolution” movement to overthrow the legitimate authorities and incited the mobilisation of the public to revolt.

In the 2013 election, the opposition and its allied media and NGOs carried out a campaign to ensure that the public and politicians in a number of countries believed their lies, manipulations and fabrications that the electoral system in Cambodia was not fair and transparent and that the election outcome was falsified by the NEC and the CPP. In doing so, they aimed to pressure the top leaders of the RGC to step down and re-organise the election, or to overthrow legitimate authorities by using people power and persuading the international community to put various forms of pressure on the RGC.

The protests against the election results, which can be characterized as a “colour revolution” to overthrow the legitimate authorities, lasted for a long time without any tangible results, and members of the CNRP lost trust in the party, as shown by a gradual

decrease in the number of participants. Thus, the CNRP's leaders plotted to use violence against the public security forces so as to trigger a violent crackdown by authorities, aimed at creating an excuse to have negotiations with the CPP. The ensuing violence left 39 members of the public security forces wounded. The event was not an accidental clash between the protesters and the public security forces, but rather a well-thought-out plan, with various tools being readied for use in violent confrontations. The public security forces were ill-equipped to defend themselves, thus suffering injuries, while none of the protesters were injured.

## **Culture of Dialogue**

Samdech Techo Prime Minister Hun Sen is a staunch advocate of the culture of dialogues throughout his political career. He met with the late King Father in Fere-en-Tardenois in 1987, which paved the ways for subsequent gatherings leading to the Paris Peace Agreement in 1991. He initiated the *Win-Win Policy* resulting in the full dismantling of Khmer Rouge's political and military organization in 1998. And he was the one who compromised following the post-2013 election to resolve national issues.

However, without trust and mutual respect, this culture of dialogue was derailed by the opposition parties.

Trust cannot be built when opposition leader compared Samdech Techo Prime Minister Hun Sen to Qaddafi and spread rumor that his son is not of his own. There was not one single condemnation for the insulting remarks by Sam Rainsy against Samdech Techo Prime Minister Hun Sen during an interview as published in 2015 in a Western newspaper, which triggered the beginning of the end of the "*culture of dialogue*."

The government expects a "*genuine culture of dialogue*" where the opposition parties fulfill their roles as elected representatives by jointly discussing development policies at the parliament and providing constructive policy recommendation to the government for the sake of economic growth and prosperity of our nation.

As defender of democracy and human rights, the Special Rapporteur should urge opposition parties to respect the Constitution and the Cambodian laws and behave as the "*loyal opposition*" that respects civilized and democratic practices. They should not drive political support through provoking racial hatred, defamation, incitement and subversive deeds, which in turn, bring about the destruction to the country.

## **Freedom of Expression, Media and Assembly**

It is commonly reported that the freedom of expression in Cambodia is under threat. However, it is a matter of misperception. In fact, it is quite the opposite. Currently, Cambodia has some 550 printed media institutions, 148 news media websites, 211 radio stations, 21 TV channels and 112 TV relay stations, 58 online TV channels, 5 digital pay-TV stations, 113 cable TV stations in provinces, and 39 press associations and media centers. Internet wise, more than 50% of the total population have access to it. Moreover, the Royal Government's policy is to increase the nationwide use of internet. Far from limiting on the freedom of expression, the Royal Government encourages more media expansion to enhance the free flow of sharing information and opinion.

We would like to point out though that freedom of expression is not the same as freedom to insult, to lie and fake information or to defame or discredit individuals or institutions/organizations. Statements inciting hatred and xenophobia are prohibited. That is why there are laws and regulations to sanction such practices, as in many other countries in Europe.

Cambodia undertook the amendment of the LPP based on the principles laid in its Constitution. From a legal perspective, the amended law applies indiscriminately to every political party and bears all the basic requirements that any democratic countries should adhere to. Nothing in the amended law is threatening the fabric of a multi-party system. As in all democratic countries, the amended law is aimed at preventing abuses that are against

the fundamental democratic principles, such as incitement to racial hatred, defamation, malicious attempt to destroy the social fabric and unity of the nation. The Royal Government is duly bound to protect the sanctity of its existing institutions.

What Cambodia did in terms of amending its own political party law is not at odd with international practices. For that matter, the EU, through the Venice Commission, has adopted in 1999 its “Guidelines on Prohibition and Dissolution of Political Parties and Analogous Measures.” The prohibition or dissolution of political parties can be envisaged if necessary to protect a democratic society, when, for example, a party advocates violence in all forms such as racism, xenophobia and intolerance. We see the same practices and stipulations in constitutions and laws of some countries in Europe such as France, Denmark, and Portugal and also of some other countries in Asia namely Indonesia, Malaysia and the Philippines, etc.

As of May 2018, Cambodia is home to about 6,000 registered local and international associations and NGOs, an overwhelming figure as compared to its ASEAN neighbors. We have to point out that not all NGOs have the legitimacy to represent the civil society and to speak on behalf of the whole Cambodian population. A number of them, hiding behind the veil of supposedly humanitarian or development activities, are in fact deeply engaged in political activities funded by foreign institutions and governments. They have operated freely without any transparency and accountability in a totally unregulated area for some two decades.

The National Assembly has enacted the Law on Association and Non-Governmental Organization (from here onward LANGO) for the purpose of upholding democratic principles, freedom of expression and assembly, public order and social security, which are all enshrined in the Constitution. The law was carefully formulated taking on the best practices of NGO laws of other mature democratic countries like France, Australia, Singapore, Thailand, Japan, and the US (New York State and the California State). Not to say that it is also well in line with the existing national and international legal frameworks, i.e. Article 42 of the Constitution guaranteeing the right of association to be governed by the Law, Article 20 of the Universal Declaration on Human Rights and Article 22 of the International Covenant on Civil and Political Right (ICCPR).

Unfair critics and concerns so far made mainly by an opposition party and its allied organizations are based on mere groundless suspicions rather than on a sound and well-reasoned factual justification, to which the Royal Government find it not acceptable. Other critics are overblown, biased and misguided sometimes. For example, it was criticised that the Royal Government did not include stakeholders in the amendment and legal drafting process. This critic creates a wrong impression to the public, because it suggested that stakeholder participation is mandatory. Neither the Constitution nor statutes require the Royal Government to involve stakeholders in drafting legislation. Only best practices suggest that technical feedback from experts improve the quality of legislation. From this point of view, additional technical expertise could have improved the overall quality of the laws, but it was no means a mandatory requirement. That clarification notwithstanding, the Royal Government has worked for nearly two decades on numerous drafts in consultations with civil society organizations and major development partners minus a major super power which chose not to be involved in the drafting working group. The Royal Government is clearly of the view that 20 years of consultations is adequate.

Currently, there are 5,389 registered local associations and non-governmental organizations (CSOs) (2,215 associations and 3,174 non-governmental organizations), which reflect an average of 21 new associations and NGOs registered per month. After the Law on Associations and Non-Governmental Organizations (LANGO) was promulgated under Royal Decree NS/RKT/0815/010 dated 12 August 2015, until the end of June 2018, there are 744 associations and non-governmental organizations were established and duly registered with the Ministry of Interior pursuant to this law, out of which 418 are associations and 331 are non-governmental organizations. The Ministry is currently in the process of identifying the actual numbers of all registered associations and NGOs that are currently operational.



Based on the above data, there is no evidence that there is a decrease in the number of the establishment of local associations and non-governmental organizations as alleged by some individuals and self-serving organizations that the Royal Government and the Ministry of Interior are restricting the right to freedom of association and non-governmental activities, including the right to freedom of expression and opinions.

For the avoidance of any doubt, aside from the closure of NDI, there is no other case of any NGO being deregistered or closed down as the result of the implementation of the LANGO.

After the promulgation of LANGO, the Ministry of Interior has organized a national workshop on May 12, 2016, with approximately 500 participants from a broad range of stakeholders, including relevant ministries and governmental institutions, sub-national administrations, associations and non-governmental organizations, in order to promote the rule of law in the country and to facilitate the establishment of these civil society organizations in conducting their activities in compliance with the new law.

While most CSOs are legitimate organizations, there were numerous cases of financial scams and fraudulent activities committed by some organizations under the cover of NGOs, in particular involving rural credit operations. To protect the public, the Ministry has collaborated with the Securities and Exchanges Commission and the Ministry of Economy and Finance to organize a National Workshop on Unauthorized Activities in the Securities and Exchange sector and the Dissemination on LANGO.

The Ministry has issued two additional announcements, the first one on July 4, 2017 and the second one on December 11, 2017 to urge CSOs to comply with the LANGO.

The Ministry has also issued a press release related to the dissemination of LANGO to the wider public, stating in the most unequivocal terms the government's position vis-à-vis the civil society organizations as its cooperative partners in economic and social development.

The Ministry is pleased to inform that recently some 20 CSOs have approached the General Department of Taxation (GDT) to explain on the various legal provisions pertaining to their tax obligations. The GDT has provided clarifications as to the legal requirement for CSOs to obtain Tax ID as well as other beneficial provisions, i.e. related to tax exemptions and non-retroactivity, etc.

In addition, the Ministry has also issued a Notice No 1753 dated October 2, 2017 to the Provincial and Capital Administration and the relevant competent authorities to facilitate and create favorable conditions for activities of civil society organizations that are duly registered. For avoidance of any doubt, the notice states that duly registered organizations can conduct their regular activities as stipulated in their Statutes without having to ask permission from the local authority. For extra-curricular activities, not stipulated in their existing Statutes, there is a requirement to inform within 3 days prior to undertaking the activities.

Lately, the Ministry of Interior has been informed by our development partners, but not directly by the affected CSOs, that there were some harassment or intimidation on the part of the local authorities in limiting or forbidding their activities at the local levels, in general terms and not specific where such activities were taken place. The Ministry, in all sincerity, would like to urge those CSOs to reach out to the ministry and expressed their concerns directly. Without knowing the full situation first hand and relying only on hearsay, the Ministry would not be in a position to effectively resolve their concerns.

It was in that spirit that on 21 June 2018 the Ministry organized a “Forum of Partnership between the Government and Civil Society” to re-assess the cooperation situation between both parties and to find effective measures to overcome the challenges for all CSOs, particularly to support the reform of democratic development at the sub-national administrative levels. About 400 participants attending the Forum came from ministries, provincial and district administrations, development partners and some 200 CSOs.

The Forum made the following recommendations:

1. to establish a technical working with representatives from key line ministries and CSOs to work on improving the implementation of the LANGO, and other regulatory measures affecting CSOs' activities.

2. to organize regularly Partnership Fora as a trust building multi-partite mechanism (Royal Government, CSOs, private sectors and Development Partners) consistent with SDGs and partnership strengthening.

3. for other remaining recommendations from the CSOs', the Ministry of Interior is still working to resolve them in the spirit of strengthening and improving true partnership.

The Directorate General of Administration has already submitted a report to the senior level officials of the Ministry to request their guidance on the above recommendations.

### **Closure of NDI**

NDI was banned pursuant to the Note Verbale of the Ministry of Foreign Affairs and International Cooperation (MFAIC) on August 23, 2017 on the basis that NDI did not have a signed MOU with the MFAIC, either prior and after the entering into force of the LANGO. The MOU entered with NEC is only a partial fulfilment of the registration process and as such does not provide adequate legal ground for NDI's legal operation in Cambodia. NDI has failed to comply with Article 34 of the LANGO, which stipulates that: "The competent authorities shall take measures to immediately stop any foreign association or non-governmental organization that conducts its activities without registration or which validity of memorandum of understanding is terminated by the MFAIC. Additional measures related to the expulsion under the Law on Immigration may be undertaken against any foreigner who works for a foreign association or non-governmental organization for committing the above offense regardless of other criminal punishments." The filing of an application by NDI one year post adoption of LANGO is sufficient proof of NDI's contempt of the law inasmuch as it is tantamount to an illegal conduct of its operation in Cambodia. Submission of an application to the MFAIC does not automatically equate to an approval of application just as when an individual applies for a foreign visa, there is no guarantee or an assumption that the visa will be granted. According to Article 14 of the LANGO, the MFAIC is not duty bound to provide an explanation for its decision regarding the approval or non-approval of the MOU application.

### **The Role of the General Department of Taxation and the Case of the Cambodia Daily**

We start with the premises that in the context of the public administrative reform, which is a key pillar of the Royal Government's Rectangular Strategy Phase III, the General Department of Taxation (GDT) has been praised for its achievements in enhancing its capability in tax revenue collection in recent years through the reform of tax administration, human resource, modernization of its information technology system, etc. As a result of these comprehensive reforms, the GDT has exceeded the target for the past 6 years in a row, with a revenue target increased by 20% on average year-on-year, without having to introduce new taxes or increasing the tax rates, but rather through its efforts to expand its tax base at the maximum as well to ensure equity and a level playing field among all taxpayers.

The reform programs have benefited from technical support from numerous international development partners such as the IMF, World Bank, JICA, Overseas Technical Assistance (OTA) of the US treasury Department, and SIDA, etc. According to the *IMF's Finance & Development Report Article, Vol. 55, No. 1, dated March 2018*, Cambodia was recognized by IMF as one of the top five countries that excels in tax reform and achieves large revenue gains.

The GDT has taken preventive steps to tackle tax evasion with effective legal enforcement measures such as, *inter alia*, an unilateral tax registration of non-registered taxpayers, a tax audit to verify the integrity of taxpayers' tax declaration, and enforcement of tax arrears collection for taxpayers who do not fulfill their tax obligations, etc. These measures are generally implemented on taxpayers across all sectors, including the media sector, where the GDT has found cases of tax evasions. Unfortunately, and quite unfairly, some critics have twisted a legal tax issue into a politically motivated statement, accusing the Royal

Government for using tax and licensing measures to restraint the freedom of the independent media, mainly focusing on the audit of *The Cambodia Daily* and some radio stations.

For the records, the Royal Government would like to clarify that the case of tax evasion by *The Cambodia Daily* is not unique as the GDT has found many other taxpayers who have committed similar tax offenses. In fact, *The Cambodia Daily* has operated its business since 1993 without having any tax registration nor fulfilled its tax obligations. The GDT had made numerous attempts, by phone calls and by written invitation letters, requesting the owner of *The Cambodia Daily* to resolve its tax non-compliance issue. Quite regrettably, the newspaper owner did not cooperate with the GDT and postponed on numerous occasions the meetings without offering any valid excuses.

According to Article 117, 128, 130 and 131 of the Law on Taxation (LoT), the GDT has conducted unilateral assessment on *The Cambodia Daily*'s unpaid due tax only for the past 10 years, even though this newspaper has operated its business for more than 24 years. This tax assessment includes an amount of unpaid tax, plus additional tax and late payment interest.

According to Article 118 and 120 of LoT, *The Cambodia Daily* has the rights to protest, partially or as a whole, to the tax assessment made by the GDT within 30 days after receiving the notification letter by providing supporting evidence indicating that the GDT's tax assessment is not correct. However, *The Cambodia Daily* has chosen not to cooperate with the GDT and instead went on to turn a tax assessment matter into a politically motivated case and to lobby the international community to put pressure on the Royal Government.

The GDT has issued a demand for tax arrears settlement to the owner of *The Cambodia Daily* to settle its tax arrears by the deadline as determined by the laws. The owner of this newspaper, however, not only did not settle the tax arrears, but publicly announced the closure of *The Cambodia Daily* in its September 3, 2017 edition. Let the fact shows that the Royal Government did not shut down *The Cambodia Daily*, but it was the newspaper owner himself who did it. That fact notwithstanding, the GDT is merely trying to do its tax collection work as per its mandate.

Contrary to *The Cambodia Daily* case, *The Phnom Penh Post (The Post Media Co., Ltd.)* is quite the opposite. *The Phnom Penh Post* was operating in Cambodia since 2007 and has properly registered and fulfilled its tax obligation as stipulated by the laws. It has been filing its monthly and yearly tax return and paid punctually its tax due. The GDT regularly conducted a tax audit of *The Phnom Penh Post* and received normal cooperation, in term of submission of pertinent documents and information related to the business operation. The owner of *The Phnom Penh Post* has acknowledged the professionalism of GDT's tax auditors.

In response to some rumor circulating that the tax assessment on *The Post Media Co., Ltd.* is an attack of the freedom of independent press in Cambodia, Mr. Marcus Holmes, CEO of *The Post Media Co., Ltd.*, issued statement in his newspaper March 20, 2018 edition that the tax audit carried out on *The Post Media Co., Ltd.*, as well as on other enterprises, is not out of the ordinary. The GDT performed the tax audit in accordance with appropriate audit procedure and has no reason to believe any of these matters are politically motivated, and *The Phnom Penh Post* is not going to close like *The Cambodia Daily* did.

The GDT would like to inform that it has conducted 9,976 audit cases over the past four years, with the amount of tax collection accounting for around 2,265 billion USD. These results are good testimonial to the fact that the GDT has no motive whatsoever to target those independent media, provided they are in compliance with the tax laws. Tax audit is a routine work for the GDT as well as for any other country's tax administration in the world.

With the cooperation with relevant competent authorities such as the Ministry of Information, the Ministry of Interior, and the Ministry of Foreign Affairs and International Cooperation (MFAIC), the GDT has discovered that there are a number of media companies and NGOs which continue to operate illegally without obtaining operating licenses from the relevant authority nor registering and complying with the tax laws. Some

have obtained their licenses but have not registered with the tax administration; others have registered with the tax administration but have yet to fulfil its tax obligations. The GDT is cooperating with relevant authorities to encourage these entities to fulfil their tax obligations in line with its RMS 2014-2018, which was introduced by the Royal Government since 2013.

Another media case worth mentioning is *MMA (Cambodia) Co., Ltd. (Radio France International FM 92 MHz)*, which has cooperated fully with the tax administration to fulfill its tax obligations after receiving the request from the GDT. Quite the opposite is the case of *Radio Free Asia (RFA)* and *Voice of America (VOA)*. These two news agencies have neither registered with the tax administration nor fulfilled legal tax obligations nor obtained any operating licenses from the competent Cambodian authority. The GDT has requested the two entities to clarify their tax compliance, such as tax registration, filing tax return and fulfilling other tax obligations, i.e. tax on salary and withholding tax. Not only that *RFA* did not register and fulfil their tax obligations, instead it has chosen to close its office, dismissed its employees and started operating in secret, in addition to pursuing their lobbying the international community to put pressure of the Royal Government.

As sum, the Royal Government would like to reiterate that tax audits are a normal part the routine tax administrative work, and the GDT has applied the same audit procedures on many other businesses across the board, regardless of whether the entities are independent media or not. The Royal Government welcomes the opportunity to cooperate with the international community and remains available to provide any additional clarifications on the above-mentioned cases.

## **Progress Report on Land Dispute Resolution on the Economic Land Concession for Sugar Cane Plantation**

In 2006, villagers and communities in four provinces, namely Koh Kong, Kampong Speu, Preah Vihear and Oddar Meanchey provinces, have requested the Royal Government to resolve their land dispute claims related to the Economic Land Concessions of Sugar Cane Plantation for Exportation (Sugar Cane ELCs). Many efforts were made by the concerned companies in an attempt to resolve the issues over the past years without much progress. On August 24, 2017, the Royal Government mandated to the Ministry of Land Management Urban Planning and Construction to find solutions for these Sugar Cane ELCs in these four provinces. The Ministry have since initiated numerous meetings and discussions with all parties and stakeholders involved/interested in these disputes, including the European Union, some International Organizations, NGOs and the affected households. As a result, the Ministry established National and Provincial Taskforces in the four respective provinces and tasked them to conduct land dispute identification and information collection. The National and Provincial Taskforces has achieved the following concrete outcomes:

### **(i) Koh Kong Province**

The disputed economic land concessions covered two companies, which are “*Koh Kong Plantation Co., Ltd*” and “*Koh Kong Sugar Industry Co., Ltd*”.

The efforts has resulted in positive solutions with all the 986 households, representing 100% of the claimants, accepting the settlement offer:

- 175 households have received each 3 hectares of land and USD 2,500 compensation in *Dang Peng* and *Chi Khar Leu* commune, *Sre Ambel* District and in *Kandol* commune, *Botum Sar Kor* District.
- 200 households have received each 1.5 hectares of land in *Chi Khar Leu* commune in *Sre Ambel* District.
- 585 households have received each USD 3,000 and 2 hectares of land in *Dang Peng* and *Chi Khar Leu* commune, *Sre Ambel* District and in *Kandol* commune, *Botum Sar Kor* District.

- 26 households have reached a complete dispute settlement with “*HENG HUY Development Company*” and are currently undergoing land titling process for title issuance in *Chi Khar Leu* commune, *Sre Ambel* District.

**(ii) Preah Vihear Province**

Five ELC companies are involved in the dispute, namely “*Land Feng Cambodia International Company Limited*”, “*Ruy Feng Cambodia International Company Limited*”, “*Heng Yu Cambodia International Company Limited*”, “*Heng Ruy Cambodia International Company Limited*”, and “*Heng Nong Cambodia International Company Limited*”.

After conducting the disputed identification and information collection process, 287 households have filled in the sheets with 57 households (around 20%) in *Mlou Prey I*, *Mlou Prey II*, *Sangker I*, *Sangker II* Communes, *Chhep* District and in *Pramer*, *Thbeng Meanchey* District and in *Tar Sou*, *Putrea* Communes, *Chey Sen* District, receiving total settlement.

*N.B. The remaining 230 households’ claims have been rejected due to either having previously received compensation or being not related to the sugarcane land issue. Moreover, those 230 claimants have accepted the mediated settlement as facilitated by the Ministry.*

**(iii) Oddar Meanchey Province**

Three companies involving in the dispute, namely “*Cambodia Cane and Sugar Valley Company*”, “*Tonle Sugarcane Company*” and “*Angkor Sugar Company*” have their ELCs withdrawn pursuant to the Council of Ministers Letter 283 dated March 13, 2015. A complete settlement has been reached for 412 households, which were provided a total of 1,028.37 hectares of land through a social land concession, of which 824 hectares of land were distributed for plot allocations and 204.37 hectares of land was used for infrastructure in *Sangkat Kon Kriel*, *Krong Sam Rong*. Currently 385 households have received their respective plots through a lottery draw while 27 households could not be identified.

*(N.B. For the cases of the unidentified 27 claimants, the Ministry assumed that they were not valid claimants for a few reasons: 1) they are not the real affected peoples in the contested area; 2) they are opportunists free-riders who dare not show up during the identification stage as organized by the Ministry.)*

**(iv) Kampong Speu Province:**

Three ELC companies are involved in the dispute, namely “*Phnom Penh Sugar Company*”, “*Kampong Speu Sugar Company*” and “*Kampong Speu Plantation Company*”. The provincial taskforce has completed 3,349 identification information sheets in *Am Leang* commune, *Thpong* District and in *Sangker Satork*, *Raksmey Samaki* and *Trapeng Chor* communes, *Oral* District.

The case of Kampong Speu is currently at the negotiation stage for claims that met the following criteria:

1. the affected households are in provincial and company name lists.
2. they have received confirmation from the village chief(s) as affected households.
3. the used to negotiate with the disputed company but have yet to receive any solution.

Households who have yet to receive compensation or have received improper compensation.

So far, 620 claimants have met the above criteria and are currently engaged in active negotiation.

*(N.B. Those claims that fall under the following criteria are not eligible for compensation:*

1. *Households who have already received proper compensation.*
2. *Households who have bought land in protected forest areas listed in 2002.*
3. *Households who have no credible source of land information.*

4. *Households who have irregular documents including rewritten and cut and pasted documents.*
5. *Households who are not recognized by village and commune authorities and have no clear land location.*
6. *Households who have claimed overlapping plots.*
7. *Households who have claimed lands outside the company's economic land concession.*
8. *Households who have claimed plots on both military and state land.*

*The Ministry estimated that there are about 2,729 claimants who fall under one of the categories listed above.*

The taskforce continues to undertake in close collaboration with local authorities and communities a comprehensive information collection in order to identify “*bona fide*” affected households but have yet to find and receive a settlement.

According to the Ministry's assessment, the ELCs has benefited the villagers/claimants in terms of infrastructure improvement, employment opportunities and improved welfare. Most of the non-eligible claimants are generally subsequent purchasers sight unseen who are not from the contested area.

### **The right of indigenous people to register their traditional residential land**

Ministry of Land Management, Urban Planning and Construction rejects the statement that “*the right of indigenous people to register their traditional residential land remains largely unrealized.*” In reality, the indigenous peoples' land right in Cambodia is clearly guaranteed in the Constitution, the Land Law 2001 and other existing laws and regulations. Indigenous peoples have full rights to participate in, to leave or to opt out their respective established indigenous communities. They have options to manage their land, whether in the form of private land or communal land, whereas the Khmers, which represent the majority of the population do not have such a privilege. From the registration database, data of registered communal land indicates that indigenous people occupy and use larger land size than the general Khmer families. From that database, there are 24 indigenous communities that comprise 2,335 households and occupy an area of 23,425.13 ha. The average size per indigenous household is about 10 ha, while a Khmer family has about 2.6 ha land parcel on average, out of which 2.12 ha accounts for agricultural and residential land.

In the framework of participatory approach, the Royal Government piloted a project on communal land title registration for indigenous community since 2010 in cooperation with Germany and Canada up until 2014. With Germany, the pilot project under the *German-Cambodian Land Rights Program* (LRP) registered 3 communities (2 communities in *Rattanakiri* Province and one community in *Mondulkiri*), as validated in the human rights assessment, conducted by the German Institute for Human Rights. With Canada, 5 communities in *Mondulkiri* Province were registered, as confirmed in the *Canadian Land Administration Support Project* (CLASP) report dated June 2013.

The Ministry set out a target of registering ten communities per year using the state budget. These 10 communities are located in *Kratie*, *Stung Treng*, *Mondulkiri* and *Ratanakiri* Provinces. Communal land titling registration is done on a voluntary basis, meaning that the respective indigenous community has to submit its application to the relevant state institutions to start the process, which is outlined below:

**Legal references:** *Determination of Indigenous Community Identity [ref: National Policy and MRD Circular and article 23(1) of Land Law of 2001]; By-law development and registration as legal entities [Article 23 (2) – Land Law]; Collective land titling [Art. 25 Land Law and Sub-decree No. 83].*

#### **Step 1: Ministry of Rural Development, Community and Supporting partner**

5 activities need to be done

- ▶ Selection of indigenous community target and supporting partner
- ▶ Capacity and consensus building in Community
- ▶ Self-identification
- ▶ Identity appraisal and issuance of identity letter from MRD
- ▶ Development of Internal Rule on Land Use and Management

### **Step 2: Ministry of Interior**

- ▶ Draft by-law consultation and appraisal
- ▶ Passing the draft by-law – holding general assembly at village
- ▶ Process registration as legal entities with the Ministry of Interior (from commune to MoI)

### **Step 3: Collective Land Titling**

4 activities need to be done

- ▶ Consultation with members and neighboring communities on boundary
- ▶ Development of Sketch map and unofficial map (Preliminary Map)
- ▶ Preparation of application submitted to the Cadastral Office at district level and provincial land department
- ▶ Official Collective land titling (Government team)

Regarding to the inclusion of indigenous people in the process of communal land title registration, actual practices have indicated that indigenous people have full right to participate at every stage of the communal land title registration.

Up to May 2018, the Ministry has achieved the following results: Communal land titles have been delivered to 24 indigenous communities (2,335 households) covering an area of 23,425.13 ha, equivalent to 669 land titles, out of which 12 communities were granted in *Rattanakiri* Province, 7 communities in *Mondulakiri* Province, 4 communities in *Kratie* Province, and 1 community in *Stung Treng* Province.

For 2019 and subsequent years, with lesser number of voluntary application submissions from indigenous communities, the Ministry plans to register five indigenous communal land per year using the state budget.

The Royal Government deems this achievement as an outstanding work in the area of communal land title registration. It is worth noting that, compared to other countries that have similar indigenous communities, Cambodia's experiences in registering the communal land is an exemplary case that could be learned from.

### **Incident on 8 March 2018 in *Snuol* district, *Kratie* province**

This incident is anecdotal and uncorroborated with conflicting reporting. As such, we do not believe that it is a systemic issue that can properly be addressed in this report.

### **Vietnamese Living in Cambodia**

Vietnamese nationals currently residing in Cambodia not in accordance with the Immigration Law have acknowledged they are Vietnamese and are filling applications to register as immigrants under the Immigration Law. Referring to the 2015-2017 survey, there are 48,675 families comprising of 180,690 Vietnamese who are residing in Cambodia, out of which 81,580 are women, and 124,969 are over 18 years old. They are divided into 3 categories:

Cat 1: Old settlers: there are 69,413 Vietnamese (34,400 as women) who are holder of older documents (Reference to the 2002 survey);

Cat 2: there are 76,614 Vietnamese who possessed and used irregular Cambodian documents; and

Cat 3: there are 34,663 Vietnamese residing without legal documents in accordance with our immigration law as of July 2018. The Ministry is in the process to review those cases in accordance with the prevailing Cambodian and international laws.

With regards to children born of Vietnamese parents and living in Cambodia, they are considered as Vietnamese. These children are not stateless. Article 9 of the new Law on Nationality promulgated in 2018 provides that: "... 2- shall obtain Khmer nationality, by having been born in the Kingdom of Cambodia: a- any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia..."). Plainly speaking, only the child of the person born from a foreign mother and father (parents) who were born and living legally in Cambodia is entitled to Khmer Nationality.

*NB: The 2018 Nationality Law abrogated the 1996 Nationality Law.*

### **Vietnamese *Montagnards***

Adhering to the human rights principles found under national and international laws and conventions, particularly the *Statute of Refugees of 1951* ratified by Cambodia on October 15, 1992, the *Protocol relating to the Statute of Refugee of 1967* and *Sub-Decree No. 224 on the procedure in the recognition of refugee status or asylum seekers in the Kingdom of Cambodia*; all Vietnamese *Montagnards* are well protected and provided proper shelters and adequate foods. As of this report, there were 197 *montagnards* who came through Cambodia and have been resettled as follows:

- (i) Seven *montagnards* (2 of them are women) have obtained a refugee status and have been resettled in a third country (Philippines) on 29 September 2017;
- (ii) 104 *montagnards* (36 of them are women) have volunteered to return back to their origin country;
- (iii) 57 *montagnards* (15 of them are women) have escaped from the holding camp; and
- (iv) 31 *montagnards* (9 of them are women with 2 newborn babies) are still living inside Cambodia. We encourage the EU Mission to visit the site and inspect the shelters of these refugees at any time.

There is a case of 31 Vietnamese *Montagnards* where the Royal Government has allowed them to resettle in a third country. However, Vietnam has objected to the decision and filed a complaint to the UNHCR. As such, the Royal Government has agreed in principle to let UNHCR discuss the matter with Vietnam, prior to taking any further step. So far, Cambodia has not received any update on the outcome of such discussion. Pending any specific outcome, Cambodia would continue to hold these 31 Vietnamese *Montagnards* for the time being.

### **On Gender-based Violence**

The Royal Government has made great efforts and achieved significant progress in term of establishing policies, legal framework and mechanisms at national and sub-national levels to respond to gender-based violence against women and children.

Cambodia ratified the *UN Convention on the Child rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) and the *Convention on the Child Rights* in 1992. Cambodia have submitted three periodic reports on the progress of the implementation of CEDAW to the UN Committee on CEDAW: the combined First, Second and Third Reports in 2005; the combined Fourth and Fifth Reports in 2013; the Sixth Report in 2017 awaiting response from the UN Committee on CEDAW.

The Sixth Report covered the 52 concluding observations raised by UN Committee on CEDAW. The government was asked to prepare a summary of the report prior to the Committee's provision of their comments.

According to the CCKC, rape and gender-based violence are regarded as serious crimes (Articles 222, 239, 246 and 250). There is no tolerance against this kind of criminal act and the perpetrators are prosecuted. Unfortunately, we are not able to provide statistics on the past prosecution because the court system does not have a system to identify the type of cases, being gender-based violence or physical violence. Compromise and mediation for



these types of criminal acts are prohibited and not encouraged by the government authority even for domestic violence cases. However, sexual violence or rape cases by intimate partners are slightly challenging for service providers to intervene because of the reluctance of the victims to seek help.

The *National Strategic Plan for Gender Equality and Women's Empowerment 2014-2018* is a five-year overarching policy to promote gender equality and women's empowerment in Cambodia and to guide efforts for gender mainstreaming across the government. This policy, which was developed under the leadership of the Ministry of Woman Affairs (MoWA) and in cooperation with line ministries, civil society organizations, and development partners, includes 9 key strategies to end violence against women and girls that are part of the *Strategic Area of Legal Protection for Women and Girls*.

The *Second National Action Plan to Prevent Violence Against Women (NAPVAW II) 2014-2018* is a key policy to end violence against women and girls. This Action Plan comprises 5 strategies and 16 sub-strategies, which are crucial to stop violence against women, such as primary prevention, legal protection and prosecution, and improvement of service delivery to gender-based-violence (GBV) survivors and their children. It also includes a strong Results Based Management framework with 56 outputs, indicators and means of verification, as well as a sound Monitoring and Evaluation System. It is currently being implemented and monitored through a high-level technical working group to address Violence against Women. The working group, led by MoWA, was established in 2012 and includes 15 line ministries, 30 CSOs/NGOs and 10 development partners.

MoWA in collaboration with line ministries, development partners and civil society have made a lot of efforts to combat violence through law dissemination and enforcement, including a 16 Days Campaign for the Prevention of Violence. MoWA has developed many policies and guidelines for service providers to use when supporting victims. In 2015, MoWA with support from UN Women, UNFPA, GIZ, Care and WHO conducted a National Study on Women's Health and Life Experience in Cambodia. In response to the study findings MoWA developed many new policies and guidelines and conducted many trainings, including the following:

- National Guidelines for managing Violence Against Women and Children in the Health System, and accompanying clinical handbook for health providers;
- A comprehensive training manual on providing health care to survivors of violence against women;
- National TOT training for an interdisciplinary team of national trainers (Subsequently this team provided some capacity building to the sub-national levels);
- Issuance (free of charge) of Forensic Examination Certificate by the Forensic Examination Committee;
- Around 1,200 victims of domestic violence and sexual abuse received legal advice and representation to proceed with matters through the formal legal system;
- National budget for the services support for women and girls subject to gender-based violence is increased from 200 Million Riels to 500 Million Riels per year;
- Guidelines for Legal Protection of Women's and Children's Rights in Cambodia;
- Minimum Standards for Basic Counseling for Women and Girl Survivors of gender-based violence were launched and implementing by the service providers [2016];
- Referral Guidelines for Women and Girl Survivors of gender-based violence [2016];
- Manual on Case Management with survivors of gender-based violence for the service providers [2017];
- Under primary prevention on Violence against Women, MoWA with technical support from UNFPA and P4P developed and implemented the manual for caregivers and adolescent. As a result, an evaluation showed promising behavior change among participants and especially for the local volunteer facilitators. Both

manuals have been revised based on recommendations from the actual implementation and is being oriented to staff of 4 Provincial Department of Women's Affairs and relevant CSOs who work in this area to continue using this model intervention.

- With support from partners, MoWA has initiated to established 6 sub-national multi-sectoral response to women survivors of violence. This mechanism is under the existing of Women and Children Consultative Committee (WCCC) and under the leadership of the Deputy Provincial Governor.

13,000 women and their families have received counseling services and over 2000 women were assisted with employment and vocational training.

### **On Accusation of Lengthy pre-trial detention and arbitrary confinement of prisoners**

In principle, the charged person shall remain at liberty. However, the charged person may be provisionally detained under the conditions stated in Article 205 of the CCPKC and the decision on the pre-trial detention is under the competent authority of the investigating judge in compliance with the CCPKC (Articles 203 to 222). According to Article 208 of the CCPKC, this provisional detention is six-month and can be extended twice, for a maximum period of six months each time. The length of detention as determined by the investigating judge shall be used to conduct the investigation in accordance with the Code of Criminal Procedure for a period of up to 18 months.

The period of provisional detention in felony cases as stipulated in the CCPKC is similar to the period of detention for felony cases in some countries in the world. In the case of the French provisional detention for serious felony, the maximum period can be up to 24 months or more.

Like many developing countries, Cambodia is in the stage of conducting its penal reform including prison reform. Due to increasing number of arrests and prosecutions as a result of the Royal Government's antidrug campaign since the beginning of 2017. Between 2015–2018, a total of 687.4 tons of counterfeit drugs, merchandises, cosmetics, food and other items have been confiscated, among which 316.9 tons were destroyed.

The number of inmates has increased accordingly from 20,997 in December 2016 to 28,391 in December 2017, a year-on-year increase by 35%. As of May 28, 2018, the total number of inmates was 29,829, out of which the number of convicted inmates with final judgment papers is only 7,684 (26%). Lengthy trial detentions are a direct result of large amount of cases and a low number of judges, prosecutors, and defense attorneys while law enforcement agencies are making more arrests, particularly drug related offenders. The DGP acknowledges the issue of arbitrary confinement of prisoners after the end of their sentences due to the absence of releasing orders from the court, even though the number of such incident is less than 1%. Lengthy pre-trial detention and arbitrary confinement of prisoners after their sentences have been completed at times took place because the final court judgments have not been communicated to the prison authorities. Prison directors are instructed to work closely with the court to notify beforehand those whose sentences are reaching their final days to issue releasing papers on time. The Royal Government is also considering alternative to imprisonment and community-based treatments of offenders starting with juvenile delinquents (the "*Tokyo Rules and Penal Code 2009*").

### **On Child abuse**

According to the CCKC, the age for sexual majority is set at 15 years, all acts of rape, prostitution, sexual abuse on minor below 15 shall be considered as severe crimes and punishable with imprisonment from 7 to 15 years. Indecent acts on minor below 15 shall be punished with imprisonment from 1 to 3 years. Perpetrators of child and sexual abuse and sexual exploitation are criminally liable and prosecuted to the full extent of the law. The *National Committee for Counter Trafficking (NCCT)* issued Guideline No. 001 that defines the measures to be taken for each offense. Moreover, to enforce the Law on Human Trafficking, the Ministry of Justice has issued the following:

- *Guidelines on the Use of Court Screen and TV-Linked Testimony from the Child/Vulnerable Victims or Witnesses;*

- *Guidelines No. 01/09 dated February 23, 2009 on the Implementation of Articles 42 and 43 of the Human Trafficking Law;*
- *Explanatory Note for the Human Trafficking Law 2013 that describe explicitly the general concept and the principle of each article.*

Moreover, the Royal Government has established the COMMIT Working Group to coordinate all activities related to human trafficking and migration at national and regional level. The Law on Tourism 2009 stipulates for the shared responsibility between the Ministry of Tourism and other ministries, institutions and related authorities in the prevention of sexual exploitation in tourism. For example, Article 48 para. E and F of the Law on Tourism stipulate that the manager of hotels or guesthouses should immediately file a complaint or report to the nearest Tourist Police, tourist authority or a competent authority in case of having known or suspected human trafficking and confinement, child trafficking and sexual exploitation/prostitution, disseminations of pornographic pictures and materials or other criminal offences. He/she should register the identity and other information of all guests upon the beginning of their stay.

Minors are prohibited from the premises of an adult tourism entertainment centre, and the managers and licensees of adult entertainment centres must ban and take reasonable measures to ensure that no minors are present.

Lastly, MoSAVY has adopted policies regarding the *Protection of the Rights of Victims of Human Trafficking* and the *Minimum Standards on the Protection of the Rights of Victims of Human Trafficking*.

In sum, the Royal Government is fully committed to uphold a violence-free society, especially for children and adults who should be protected from any form of abuses, violence and/or corporal punishment.

### **Comments from Ministry of Interior**

- Comment to Para 32. Such accident did not happen in Oddar Meanchey province
- Comment to Para 36. There was already a preliminary clarification report regarding the situation room.
- Comment to Para 39. To avoid any confusion, a notification has stated that NGOs which had registered in compliance with the laws can operate its activities as determined in terms and conditions without requesting for permission from local authorities. For other activities which not mentioned in the above terms and conditions, shall inform 03 (three) days to the competent authorities before operation.
- Comment to Para 47. There was no arrest as raised in this point.
- Comment to Para 49.

There was no obstruction; all legal measures were taken in order to protect security and order of the court during the trial.

There was no summon to an ex-CNRP commune council member for questioning at police station in Battambang province.

- Comment to Para 50. In the purpose of ensuring social security and public order only.
- Comment to Para 59. There was no arrest of citizen as raised in this point.
- Comments to Para 60/61/62: There were no intimidation and harassment in exercising of right to vote of citizens as raised in these 3 points.
- Comment to Para 88. There were no any action or intimidation to voters who were boycotted the election, obviously among voters who have right to vote and have registered in the voters lists of the NEC, there were 16% who did not go to vote, but there was no any intimidation or persecution.